

April 15, 2022

VIA ECF

The Honorable Michael J. Davis
Senior Judge, United States District Court
United States District Court, District of Minnesota
300 South Fourth Street
Minneapolis, MN 55415

Re: *United States ex rel. Laurie Simpson v. Bayer*, 08-cv-5758-MJD-ECW
Status Update

Dear Judge Davis:

We write with an update on the resolution in principle reached in the above-referenced False Claims Act *qui tam* action transferred to the Baycol multi-district litigation proceeding in 2008 (the “Minnesota action”). As discussed in our prior letter to the Court, Plaintiff-Relator Laurie Simpson has another *qui tam* action pending in the District of New Jersey captioned *United States ex rel. Laurie Simpson v. Bayer Pharmaceutical Corp., Bayer Corporation, and Bayer A.G.*, Case No. 05-cv-3895 (D.N.J.) (the “New Jersey action”). The resolution in principle encompasses both actions.

The current status is as follows:

- The federal False Claims Act settlement agreement encompassing both the Minnesota and New Jersey actions is close to finalization. The Department of Justice (DOJ), the states, and relator are finalizing the settlement agreement language, and DOJ is now working through a few items with Bayer’s counsel, which appear to be resolvable. Bayer and Ms. Simpson’s counsel spoke this week, and are also now working through a few items pertaining to, among other things, their releases and the New Jersey retaliation claim.
- The team from the National Association of Medicaid Fraud Control Units (“NAMFCU”) has made significant progress on the state portion of the settlement in the New Jersey action involving state Medicaid amounts. In the New Jersey action, Ms. Simpson brought claims on behalf of 21 states, as well as the United States. Those claims are being resolved alongside those of the federal government. The NAMFCU and relator have agreed on the relator’s share with respect to the state cases, and the NAMFCU is reaching out to all 21 states via memo to determine whether they will participate in the resolution, with a response requested from each state in May.

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- DOJ and relator have had discussions with representatives of the Plaintiff's Steering Committee in this MDL regarding the applicability of the holdback provision in the MDL (e.g., Pretrial Orders 25, 53, 166) to the federal recovery in the Minnesota action. These discussions are ongoing. Given the holdback orders, we may still need to seek clarification from the Court, but we are attempting to resolve the issue among the parties as much as possible prior to reaching out to the Court.
- The proposed resolution is subject to Department of Justice and Bayer Board approvals, which will be sought once the settlement agreement is finalized.

In our February 4, 2022 status report, the parties estimated they would finalize the federal settlement agreement and obtain the necessary approvals by April 2022. We continue to work diligently towards finalizing the settlement. Given our current status, however, and the review period built in for the states to consider the resolution in the New Jersey action, it appears agreement finalization is likely to happen in May 2022. The parties will provide a further update to the Court by May 15, 2022.

Thank you for your consideration.

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